

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 August 2007

CASE NO.: 2006-LDA-00034

OWCP NO.: 02-138658

In the Matter of:

Z. S.,

Claimant,

vs.

SCIENCE APPLICATION INTERNATIONAL CORP.,
Employer,

and

INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA/AIG WORLDSOURCE,
Carrier.

ORDER DENYING MOTION FOR RECONSIDERATION

On April 6, 2007, I issued a Decision and Order in this case brought under the Defense Base Act denying the Claimant's claim for benefits under the Longshore and Harbor Workers' Compensation Act. The District Director served this decision on the parties on April 11, 2007. On April 25, 2007, the Claimant sent a two page fax to the Office of Administrative Law Judges in Washington, D.C. asking for reconsideration and an opportunity to provide evidence that this claim is covered by the Defense Base Act. The fax was not served on Respondents or their counsel. I received the fax in my office on May 15, 2007, but mistakenly interpreted the document as a petition for review. When the mistake was discovered, I issued an order on July 12, 2007, providing Respondents with a copy of the fax and giving them an opportunity to respond. Respondents have responded and oppose the motion for reconsideration.

Respondents state that I do not have jurisdiction to consider the motion because on April 24, 2007, the day before the Claimant sent her fax to Washington, D.C., her counsel filed a petition to the Benefits Review Board appealing my decision. Alternatively, they argue that the motion for reconsideration is insufficient and that such motions may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.

Respondents are incorrect when they argue that I do not have jurisdiction over the motion for reconsideration because a petition for review was filed before the motion for reconsideration was filed. The regulations at 20 C.F.R. § 802.207 state that a petition for review is deemed to be filed as of the day that it is received by the Benefits Review Board (“BRB”). The Claimant’s petition for review was mailed on April 24, 2007, but it apparently was not received by the BRB until May 1, 2007, because that the BRB letter acknowledging receipt of the petition for review, Respondent’s Exhibit B, indicates the appeal was filed May 1, 2007. Thus, the motion for reconsideration was filed before the petition for review, and I do have jurisdiction to consider it.

The fact that the petition for review incorrectly states that no motion for consideration was filed is an issue that will have to be addressed by the BRB, though at the time the petition was mailed, that statement was technically correct.

With regard to the motion for reconsideration, it offers no argument or basis for reconsidering my decision and order denying benefits. It merely asks for an opportunity to provide evidence that indicates Defense Base Act coverage, but there is no claim that any evidence that would be offered was not available at the time of the hearing in this case. This case turned on the issue of Defense Base Act coverage. The parties had ample opportunity to offer evidence and argument on this issue at the hearing. Absent a valid argument that an error was made in the decision or that there is evidence available now that was not available at the time of the hearing, I see no reason to grant the motion for reconsideration.

Accordingly, the Motion for Reconsideration is DENIED.

A

JENNIFER GEE
Administrative Law Judge